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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 685/2015*, **

Communication submitted by:	H.I., L.I., S.I., A.I. (represented by counsel, Judith Pieters)
Alleged victims:	The complainants
State party:	The Netherlands
Date of complaint:	23 February 2015
Date of present decision:	10 November 2017
Subject matter:	Deportation from the Netherlands to Armenia
Procedural issue:	Incompatibility with the Convention
Substantive issue:	Risk of torture and ill-treatment
Article of the Convention:	3

1.1 The complainants are H.I., born in 1970, his wife L.I., born in 1978, and their children S.I. and A.I., born in 1998 and 2000 respectively, all citizens of Armenia. Their applications for asylum have been rejected by the Netherlands. The complainants claim that their deportation to Armenia would constitute a violation of their rights under article 3 of the Convention. The complainants are represented by counsel.

1.2 On 5 June 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, informed the complainants that it had denied their request for the provision of interim measures consisting of the issuance of a request to the State party to refrain from removing them to Armenia pending the examination of their complaint.

The facts as presented by the complainants

2.1 H.I. started working in a garage owned by his cousin in the city of Abovyan in 2004. Sometimes he also delivered cars to customers, as an additional service of the garage. On 3 March 2007, he had to pick up a car for a person called D.M. D.M. had previously worked as a bodyguard for a former Armenian president. The complainants claim that it is widely known that D.M. beat a man to death in 2002, but that he was only found guilty of negligent manslaughter and sentenced to one year of probation for the crime. The complainants argue that this demonstrates that D.M. has connections who are able to influence the judiciary. While the male complainant was delivering the car, he was stopped

* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.

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by the police. The car was searched and drugs were found inside it. The complainant was detained by the police overnight. With the help of his cousin, he was released on bail the next day, on the condition that he did not leave the country. Shortly after the complainant was released, D.M. visited him. The complainant was forced to go with D.M. to a warehouse, together with the latter's associates. He was requested to sign a confession stating that he was responsible for the drugs in the car. He refused to do so and was beaten. His father was also brought to the warehouse and beaten in front of him. D.M. threatened to beat the complainant's entire family and to murder them if he did not cooperate. After these threats, the complainant signed a statement stating that he was responsible for the drugs in the car. Following that incident, D.M. personally brought the complainant to the airport and he fled to the Russian Federation. After H.I. had departed for the Russian Federation, his wife was questioned by the police. She was pressured by D.M. not to say anything to the police about his involvement in what had happened. After having been questioned by the police, she also fled to the Russian Federation, together with the couple's children.

2.2 The complainants lived for three years in the Russian Federation as undocumented migrants. One day, the male complainant was summoned to a police station. The complainants could not think of any reason for the summons other than it being related to what had happened with D.M. in Armenia. They therefore decided to flee the Russian Federation, for the Netherlands. They arrived in the Netherlands on 26 October 2010 and applied for asylum on 17 November 2010.

2.3 On 23 November 2010, the Immigration and Naturalization Service expressed its intention to reject the complainants' asylum application. The Service found their stated reason for applying for asylum to be credible, but concluded that the complainants had not substantiated their claim that they would face a real risk of persecution if returned to Armenia. The Service also noted that the male complainant was a suspect in a criminal case, and found that there was nothing to indicate that he would not be able to defend himself in criminal proceedings if he were returned. The Service found that the complainants had not substantiated their claim that D.M. would be a threat to them upon return. The Service also noted that the male complainant had been able to leave Armenia legally, although his bail had been granted on the condition that he did not leave the country. On 24 November 2010, the complainants submitted their comments on the opinion of the Immigration and Naturalization Service. They argued that the male complainant would not be afforded a fair trial because of D.M.'s influence in Armenia. They also argued that the poor conditions of prisons in Armenia would amount to cruel and inhuman treatment or punishment. On 25 November 2010, the Immigration and Naturalization Service rejected the complainants' application for asylum, noting that the complainants did not seem to have much information on D.M. but only what they had heard from other persons and seen on television. The Immigration and Naturalization Service also noted that the complainants had not sought protection from the police for the threats allegedly made by D.M. Concerning the complainants' claim that the conditions in Armenian prisons were very poor, the Immigration and Naturalization Service noted that the Government of Armenia was working on improving conditions, and as an example noted that the number of cases of tuberculosis had decreased.

2.4 The complainants filed an application for judicial review of the decision before the district court of The Hague on 26 November 2010. In their application, the complainants argued that the asylum procedure was flawed because, upon their arrival in the Netherlands, they had been heard by the police and had been asked questions as to their identity and their entry into and stay in the Netherlands. The complainants argued that those questions had not been asked in the context of an Immigration and Naturalization Service interview and that the decision of the Immigration and Naturalization Service of 25 November 2010 should therefore be nullified. On 17 December 2010, the court rejected the complainants' appeal against the decision of the Immigration and Naturalization Service. The court found that the procedure for interviewing the complainants in the course of the asylum proceedings had been followed, as the police had not questioned the complainants on their reasons for applying for asylum. The court also confirmed the Immigration and Naturalization Service's finding that if the male complainant were to be prosecuted for a criminal offence upon return to Armenia, this would be for a regular criminal offence, and that nothing in the case indicated that he would be unable to defend himself in the course of

the criminal proceedings or that he would be subjected to disproportionate or discriminatory punishment. The court also noted that the complainants had not substantiated that D.M. had any influence on the authorities in Armenia, and noted that D.M. had not worked for the former president since 2002. The court therefore found that the complainants had not substantiated their claim that the Armenian authorities would be unable or unwilling to protect them, should they require assistance upon return to Armenia. The complainants' subsequent appeal to the Administrative Jurisdiction Division of the Council of State was rejected as manifestly unfounded, on 23 February 2011.

2.5 On 8 April 2011, the complainants submitted a second application for asylum, adding documents that had been obtained from Armenia after the conclusion of the first asylum proceedings, namely three summons requesting the male complainant to report to the Armenian police as a suspect in a drug trafficking case, and a summons from a police station in the Russian Federation in which the male complainant was named as a suspect in a criminal case.[1] On 14 July 2011, the Immigration and Naturalization Service rejected the complainants' application. The Service found that the complainants had not presented any new circumstances or facts, compared to their initial application, and also noted that the documents submitted by the complainants could have been submitted during the first application proceeding. The decision was upheld by the district court of The Hague on 18 August 2011.

2.6 On 7 May 2014, the complainants submitted a third application for asylum. They claimed that the male complainant's father, mother, brother, sister-in-law and their children had fled to the Russian Federation after the second asylum procedure in the State party. In 2012, the male complainant's father wanted to return to Armenia. His brother travelled to Armenia to see if the situation had calmed down. A few days after his return, he received a summons addressed to the male complainant, requesting the latter to report to the police station. The male complainant's brother visited the police station and informed the police that the male complainant was not in the country and that they should look for D.M. instead. He was dismissed and the police told D.M. about the visit. The next day, persons connected to a locally influential clan came to the complainant's brother's house, together with D.M. The complainant's brother was taken away to a building and was told that he should think carefully about what he would tell the police. He was beaten until he lost consciousness and he woke up in a hospital. At the hospital, the police interviewed him. He identified the persons who had assaulted him and the police opened an investigation. However, that investigation was later closed, because the persons identified as the perpetrators had in turn reported to the police that the complainant's brother had threatened them with a gun and that they had acted in self-defence. They also filed a report against the brother for making a false accusation. Thereafter, the male complainant's brother left the country. The complainants submitted documents from the police investigation and medical reports on the injuries of the male complainant's brother to the Immigration and Naturalization Service, in support of their application.

2.7 On 13 June 2014, the Immigration and Naturalization Service rejected the complainants' application for asylum. The Service considered that no new facts or circumstances had been presented by the complainants, as the authenticity of the documents submitted by them could not be verified. The Immigration and Naturalization Service noted that the medical records submitted by the complainants substantiated the fact that the male complainant's brother had been injured, but did not specify the cause of the injuries. It found that information provided by the complainants' family members was not an objective source of information. It also found that it had not been substantiated that there was a connection between D.M. and the locally influential clan, or that D.M. would be able to influence any legal procedure against the male complainant. The Immigration and Naturalization Service also found that the documents submitted did not substantiate the claim that the complainants would be in danger if returned to Armenia. The decision was upheld by the district court of The Hague on 17 July 2014. The court found the documents submitted by the complainants to be new evidence. However, it found that the statement provided by the male complainant's brother was not objective. It also found that the

[1] The criminal offence was not indicated on the summons.

documents did not substantiate the claim that D.M. had the power to influence the outcome of a potential trial against the male complainant or that he was connected to the local clan. The complainants appealed the decision to the Administrative Jurisdiction Division of the Council of State on 28 June 2014. In the appeal, they claimed that D.M. was now in charge of the police station in Yerevan. The appeal was rejected as manifestly unfounded on 5 September 2014.

The complaint

3.1 The complainants claim that there is a real risk that they would be subjected to torture or that their security would be endangered if they were to be returned to Armenia. They claim that they are at risk of being killed or ill-treated by D.M. or a locally influential clan, as the male complainant has previously been threatened and physically assaulted in Armenia, and as his brother has also been assaulted. They claim that the domestic authorities in Armenia will not be able to protect them upon return.

3.2 The complainants also claim that the male complainant will be prosecuted on drug trafficking charges in Armenia and that he will not be afforded a fair trial due to corruption in the judiciary.[2] They claim that if returned to Armenia, the male complainant is at risk of being beaten and tortured by the police.[3] They argue that there is a consistent pattern of gross and massive violations of human rights in Armenia. They submit that on this basis alone, the State party should refrain from deporting them to Armenia.

State party's observations on admissibility and the merits

4.1 On 7 December 2015, the State party submitted its observations on the admissibility and the merits of the complaint. The State party submits that the male complainant's claim that he will not be afforded a fair trial in Armenia falls outside the scope of the Convention in the circumstances of the case and that this part of the communication should be found inadmissible as incompatible with the provisions of the Convention.

4.2 The State party notes the complainants' claim that substantial grounds exist for believing that the male complainant would be in danger of being subjected to torture upon return to Armenia. The State party also notes that the male complainant's account of the reasons why he left Armenia was deemed to be credible. However, it submits that the complainants did not satisfactorily establish that they would face a risk of treatment contrary to article 3 of the Convention upon return to Armenia. The State party argues that due care was exercised in the domestic asylum procedures and that article 3 of the Convention was taken into account during the process. It notes that the complainants were interviewed several times and questioned on the facts and circumstances of their departure from Armenia. They were given the opportunity to submit corrections and additions to the reports of these interviews, and to respond to the notifications of intent to deny their asylum applications. The State party argues that the complainants' accounts were carefully assessed by the Immigration and Naturalization Service and reviewed by the district court and the Administrative Jurisdiction Division.

4.3 The State party refers to country reports on Armenia issued by the Minister of Foreign Affairs of the Netherlands. It notes that, as per these reports, as well as other country reports on Armenia, the human rights situation in the country gives cause for concern. However, it argues that there is no reason to conclude that expulsion to Armenia would in itself involve a risk of a contravention of article 3 of the Convention, as the threshold for accepting such a general state of violence is high. The State party submits that it is therefore for the complainants to make a persuasive case for their fear of a breach of article 3 of the Convention, on the basis of personal facts and circumstances.

[2] The complainants refer to a United States Department of State country report on Armenia dated 27 February 2014, according to which courts remain subject to political pressure from the executive branch.

[3] The complainants refer to the same United States Department of State country report, according to which police regularly beat suspects upon arresting and interrogating them, mainly to extort confessions.

4.4 The State party considers it possible that upon return to Armenia the male complainant may face a court case concerning the drugs found in the car that he was driving on 3 March 2007. However, it argues that the mere risk of being arrested and tried is not sufficient to conclude that there is a risk of being subjected to torture. It submits that the complainants have not adduced any personal facts or circumstances which would require the conclusion to be drawn that there is a foreseeable, real risk of them becoming victims of torture. The State party also notes that the complainants have not claimed that they were subjected to torture prior to their departure from Armenia. The State party notes that on 3 March 2007, after drugs were found in the car, the male complainant was taken to a police station, where according to his own statements he was not ill-treated or tortured. It argues that it is therefore difficult to understand why the complainant would face such treatment upon his return. The State party also notes that the male complainant was released the same evening after his cousin had reported to the police station, and therefore considers that the police did not wish to put pressure on the male complainant in any way to force him to confess under torture or by any other means. It submits that the male complainant has not adduced any personal facts or circumstances that would indicate that the police would now have a reason to torture him. It also argues that the fact that he failed to comply with his bail conditions does not provide sufficient grounds for such a conclusion. The State party notes that in the domestic proceedings the complainants also claimed that the detention conditions in Armenia were poor and that to deport the male complainant to Armenia would therefore be contrary to the State party's international obligations. In that connection, the State party argues that although the detention conditions in Armenia give cause for concern because of overcrowding, inadequate sanitary conditions and medical care, and corruption, it cannot be said that they generally amount to torture within the meaning of article 1 of the Convention.

4.5 The State party notes that the complainants have also expressed a fear of D.M. and a local clan if returned to Armenia. The State party refers to the Committee's jurisprudence and argues that the issue of whether a State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the authorities, falls outside the scope of article 3 of the Convention.[4] It argues that the fact that D.M. and his associates have beaten and assaulted the male complainant does not constitute grounds to assume that he would suffer treatment prohibited under article 3 on his return. It submits that it has not been established that D.M. acted with the consent or acquiescence of the Armenian authorities. It notes that D.M. has not been the bodyguard of the former president of Armenia since 2002. Nor has it been established that D.M., either in 2007 or currently, has connections with the Armenian authorities or that he could exercise influence on the authorities. The State party also argues that it has not been demonstrated that the complainants would be unable to call on the protection of the Armenian authorities or that the authorities would be unable or unwilling to provide such protection. The State party notes that it was not until the complainants' third asylum application that they stated that they also had reason to fear the local clan, and argues that the complainants have not been able to demonstrate that they would face problems from the clan or that any links exist between the clan and D.M.

4.6 Should the Committee not find the male complainant's claim that he would not be given a fair trial in Armenia to be inadmissible, the State party submits that the mere fact that he may possibly not be afforded a fair trial on his return, or that other human rights would not be fully guaranteed, does not amount to torture within the meaning of article 1 of the Convention.

Complainants' comments on the State party's observations

5.1 On 6 February 2016, the complainants submitted their comments on the State party's observations. They submit that the complaint is admissible in full. They note the State party's submission that the claim that the male complainant would not be afforded a

[4] The State party refers to the Committee's jurisprudence in *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), *S.S. v. Netherlands* (CAT/C/30/D/191/2001), *M.P.S. v. Australia* (CAT/C/28/D/138/1999) and *M.F. v. Sweden* (CAT/C/41/D/326/2007).

fair trial should be declared inadmissible as incompatible with the Convention. They consider that this part of the complaint should be declared admissible, as the male complainant is at risk of being tortured in detention. They disagree with the State party's assertion that their asylum applications were processed with due care. They note that their initial application was processed by the Immigration and Naturalization Service in eight days and that the Committee in its 2013 concluding observations on the State party expressed concern that the pressure to decide claims speedily put constraints on procedural safeguards and a fair review of applications by the Immigration and Naturalization Service.[5]

5.2 As to the State party's argument that the complainants have not adduced any personal facts or circumstances which would indicate that the male complainant would face a risk of torture by the Armenian authorities if returned, the complainants argue that he would be at risk of being tortured by the police in order for him to confess to the drugs offence, about which he has not made any prior confession to the police. The complainants refer to the 2016 Human Rights Watch report on Armenia, according to which human rights groups have reported that torture and ill-treatment in custody remain serious problems in pretrial and post-conviction facilities, especially in order to coerce confessions.[6] The complainants also refer to the Committee's 2012 concluding observations on Armenia, in which the Committee expressed concern over numerous and consistent allegations of routine use of torture and ill-treatment of suspects in police custody, especially to extract confessions to be used in criminal proceedings.[7]

5.3 The complainants reiterate that their fear of third parties is well founded, as the male complainant, his father and his brother have previously been assaulted and threatened in relation to the incident in March 2007, and as D.M. has an influential position in Armenia and is connected to a local clan, the leader of which is an elected parliamentary official. They argue that they will not be able to seek protection with local authorities in Armenia due to D.M.'s and the clan's connections to the authorities. They argue that it is common knowledge that D.M. is linked to the clan.

State party's further observations

6.1 On 7 February 2017, the State party submitted further observations on the complaint. It refers to its observations of 5 December 2015 and reiterates its position that it has not been established that the complainants would be subjected to treatment contrary to article 3 of the Convention upon return to Armenia. In addition, the State party notes that the complainants question the asylum procedure in its entirety. It argues that the purpose of the general asylum procedure in the State party is to provide a more expeditious and careful examination of asylum applications. An assessment will be made in every case to determine whether an application can be examined with due care within a period of eight working days. If this is not the case, the applicant will be referred to the extended asylum procedure. The State party notes that before the start of the asylum procedure, the applicant is given a period of rest and preparation, which lasts at least six days, during which he or she has the opportunity to prepare for the asylum procedure. During this period, the applicant will also be informed of the importance of substantiating the application with documents. He or she will be prepared for the procedure and interviews by a representative of the Dutch Council for Refugees and by legal counsel. During that period, all asylum seekers can also choose to undergo a health check. The primary purpose of the health check is to assess whether any medical problems exist that may interfere with the applicant's ability to make consistent, coherent and complete statements during the interviews.

6.2 The State party argues that the complainants' asylum procedure entailed a careful examination of the risk of a violation of article 3 of the Convention. The State party argues that the outcome of this examination was reviewed by domestic courts, which saw no reason to conclude that it had not been reached with due care. It argues that the complainants' account in support of their asylum application, including the issues with D.M.

[5] See CAT/C/NLD/CO/5-6.

[6] See www.hrw.org/world-report/2016/country-chapters/armenia.

[7] See CAT/C/ARM/CO/3, para. 8.

and the possibility that the male complainant may face criminal prosecution in Armenia, were found to be credible by the domestic authorities and that there was therefore no reason to refer the complainants to the extended asylum procedure to enable them to further substantiate their factual account with documents. The State party also notes that the complainants did not request to be referred to the extended asylum procedure. It argues that the documents submitted by the complainants in their second and third asylum applications did not give any reason to conclude that an expulsion to Armenia would involve a real risk of a violation of article 3 of the Convention, as the documents only served to further substantiate facts which had already been found to be credible in the first asylum procedure, but had also been found insufficient to establish the existence of the aforementioned risk.

6.3 The State party notes that the male complainant claims that he is at risk of being tortured by the police upon return to Armenia, in order to extract a forced confession. The State party reiterates that according to the male complainant's own statements, he was not ill-treated or tortured by the Armenian police when he was initially apprehended in possession of drugs and subsequently detained, and that it is therefore difficult to understand why he would now be treated differently in case of return to Armenia. The State party submits that although country reports indicate that ill-treatment by authority figures still occurs, especially by the police during the arrest and interrogation of civilians, this information does not justify the conclusion that such ill-treatment is systematic and that every civilian who is arrested risks facing such treatment.

6.4 The State party notes that the complainants claim that upon return to Armenia the male complainant will face physical violence and interference in his criminal trial at the hands of D.M. or a local clan, and that the Armenian authorities will be unable to protect him. The State party argues that the complainants have not substantiated the claim that D.M. has any connections to the Armenian authorities or that he is in a position to exert influence over those authorities. It notes that the complainants' claim that D.M. may be in charge of a police department in Yerevan dates back to an Internet blog post written by a private individual in 2003 and that the website of the police in Armenia provides no indication that D.M. is in charge of any branch of the police. The State party also argues that the complainants have failed to establish that there is a connection between D.M. and the clan, or that the clan has shown any interest in the complainants. The State party submits that the complainants have not established that the Armenian authorities would be unable to protect them from D.M. or the clan, should protection be required.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainants have exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.3 As the Committee finds no obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

8.2 In the present case, the issue before the Committee is whether the return of the complainants to Armenia would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally at risk of being subjected to torture upon return to Armenia. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of return. The Committee recalls that the aim of the evaluation is to establish whether the individuals concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which they would be returned. The existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[8]

8.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.[9] The Committee recalls that under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while, at the same time, it is not bound by such findings and has the power, under article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.5 In the present case, the complainants claim that there is a real, foreseeable and personal risk of them being killed or ill-treated by D.M. or a locally influential clan, if they are returned to Armenia. They also claim that local authorities would be unwilling or unable to protect them upon return. They further claim that the male complainant is at risk of being beaten and tortured by the police in order to extract a false confession.

8.6 As regards the complainants' claim that they would be at risk of torture by non-State actors, the Committee recalls that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The Committee recalls its jurisprudence that the issue of whether a State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the government, falls outside the scope of article 3 of the Convention.[10] The Committee notes that the complainants have alleged that D.M. holds an influential position with the Armenian authorities as, until 2002, he worked as a bodyguard for a former president of Armenia. Furthermore, it notes that the

[8] See, inter alia, *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.3.

[9] See, inter alia, *A.R. v. Netherlands* (CAT/C/31/D/203/2002), para. 7.3.

[10] See, inter alia, *M.P.S. v. Australia* (CAT/C/28/D/138/1999) and *M.F. v. Sweden* (CAT/C/41/D/326/2007).

complainants have also claimed that he may be in charge of a police department. However, the Committee notes that the complainants only base this latter information on an Internet blog post by a private individual dated 23 March 2003, that is, before the incident that made the complainants leave Armenia had occurred, at which point they did not describe D.M. as working within the police or with any other governmental entity. The Committee notes that it has therefore not been established that D.M. is working within a governmental entity. It also notes that the complainants did not report the threats and assault against the male complainant to the police and that nothing on file indicates that the assault was inflicted with the consent or acquiescence of a public official. The Committee also notes the State party's submission that the complainants have not presented any specific information that would enable the conclusion to be drawn that the local authorities would be unable or unwilling to protect them, should they be in need of such protection upon return to Armenia. The Committee therefore finds that the complainants have not sufficiently substantiated their claim that, upon their return to Armenia, they would be at risk of suffering retribution from D.M. with the consent or acquiescence of a public official or of other persons acting in an official capacity.

8.7 The Committee notes that the complainants' claim that the male complainant would be at risk of being tortured by the Armenian police, in order to extort a false confession. In this connection, the Committee notes the current human rights situation in Armenia and refers to its concluding observations on the fourth periodic report of Armenia, in which it expressed concern, inter alia, at the persistent allegations of torture and ill-treatment perpetrated by law enforcement officials during arrest, detention and interrogation, and at the remaining deficiencies in investigating and prosecuting such complaints effectively.[11] However, the Committee recalls that the occurrence of human rights violations in one's country of origin is not sufficient in itself to conclude that a complainant runs a personal risk of torture.[12] The Committee is of the opinion that the complainants have therefore failed to establish the existence of a foreseeable, real and personal risk of torture by the local police upon return to their country of origin.

8.8 As regards the complainants' claim that they would be at risk of being killed or tortured by a locally influential clan, the head of which they claim is an elected parliamentary official, the Committee notes that the complainants do not submit any information according to which they have been personally threatened or assaulted by the clan. They argue that they are at risk of such treatment due to D.M.'s connection to the clan and due to the incident involving the male complainant's brother. The complainants also submit that D.M.'s connections with the clan are common knowledge, but no specific details are provided in that regard. The Committee notes that the police opened an investigation into the alleged perpetrators of an assault against the male complainant's brother, but that this complaint appears to have been closed following a counter-claim against the male complainant's brother. The Committee finds that, based on the information on file, sufficient information has not been presented to enable a conclusion to be drawn about the reason for closing the investigation. On the basis of the facts as submitted by the complainants, the Committee is of the opinion that substantial grounds indicating a foreseeable, real and personal risk of torture upon return have not been established as regards the complainants' claims in this part of the complaint.

8.9 The Committee notes that the complainants have also claimed that the male complainant will not be afforded a fair trial in Armenia. However, the Committee notes that the complainants have not provided any specific information in that regard, and therefore finds that they have failed to substantiate this part of the complaint.

8.10 The Committee notes that in their asylum application, the complainants also made reference to the poor detention and prison conditions in Armenia. The Committee recalls its concluding observations on the fourth periodic report of Armenia, in which it expressed concern at the poor material conditions in some prisons in Armenia, including the inadequate sanitary conditions, the low quality of nutrition and the limited offer of extra-regime activities. However, in its concluding observations the Committee also welcomed

[11] See CAT/C/ARM/CO/4, para. 17.

[12] See, inter alia, *R.D. v. Switzerland* (CAT/C/51/D/426/2010), para. 9.2.

measures taken by Armenia to address overcrowding and improve the conditions of detention in prisons.[13] The Committee notes that the complainants' allegations regarding the prison conditions are of a general nature. The Committee is of the opinion that they have therefore not established either that the conditions in a detention centre or prison in which the male complainant may be detained would generally amount to torture within the meaning of article 1 of the Convention, or that the circumstances of his case are such that he would be subjected to treatment falling under that provision.

8.11 The Committee notes that, in their comments on the State party's observations, the complainants also argued that their asylum application had not been examined with due care by the authorities of the State party, as it had been decided upon within eight working days by the Immigration and Naturalization Service. The Committee also notes the State party's argument that the complainants did not request that their application be examined under the extended application procedure. The Committee notes that there is no information on file indicating that the authorities of the State party failed to take any of the complainants' grounds in their application for asylum into account. The Committee therefore finds that the complainants have failed to establish that their application was not examined with due care.

9. On the basis of the above, and in the light of the material before it, the Committee considers that the complainants have not provided sufficient evidence to enable it to conclude that their forcible removal to their country of origin would expose them to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

10. The Committee, acting under article 22 (7) of the Convention, decides that the complainants' removal to Armenia by the State party would not constitute a breach of article 3 of the Convention.

[13] See CAT/C/ARM/CO/4, para. 26.